Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
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Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment	)	WC Docket No. 17-84

COMMENTS OF THE COMPUTING TECHNOLOGY INDUSTRY ASSOCIATION (COMPTIA)

I. Introduction and Summary

The Computing Technology Industry Association (CompTIA) is a non-profit trade association serving as the voice of the information technology industry. With approximately 2,000 member companies, 3,000 academic and training partners and nearly 2 million IT certifications issued, CompTIA is dedicated to advancing industry growth through educational programs, market research, networking events, professional certifications and public policy advocacy.

CompTIA's membership includes not only ISPs providing high-speed broadband service, but also many companies whose products and services rely on their own and their customers' access to high-speed broadband. We have worked for years at both the federal and state levels to help remove regulatory barriers to the deployment of broadband infrastructure, and appreciate the opportunity to comment in response to such a critical NPRM. Deploying broadband infrastructure is costly enough on its own and additional regulatory barriers can serve to keep ISPs from investing further into their networks, and may keep new competitors from entering the market. Removing these barriers will help to increase competition, improve speeds and lower customer costs.

Reducing pole attachment costs and speeding access to poles are two of the simplest and most meaningful ways that the FCC help to increase broadband deployment nationwide. The rules the Commission crafts in this rulemaking should focus on improving and speeding up the process of gaining access to poles. Penalizing pole owners financially and incumbent attachers for delaying the process isn't the answer, however. There is no certainty that a harsher financial penalty regime will actually achieve the desired result of speeding the process, and ultimately could prove counter-productive. Under such an arrangement, incumbents may be incentivized to wait until the last possible day before doing the required make-ready work, and sometimes may simply choose to pay a fine instead of doing the work at all.

The FCC should thus implement a federal one-touch, make ready (OTMR) rule, which would actually speed up the pole attachment process. Additionally, it should limit the make-ready fees charged by pole owners to actual costs incurred. Finally, the Commission should lay out guidelines for best-practices for access to rights-of-way, and preempt state laws only when they significantly delay the deployment process.

II. One-Touch, Make-Ready and Make-Ready Fees

As noted in the NPRM, the timeline to process requests for access to utility poles can take up to four months.[1] For large requests (over 3000 poles), it can take even longer as there is no statutory timeline in place. More than half of the timeline for utility pole access is often dedicated to the make-ready work timeframe.[2] Under the current rules, new attachers may have to wait up to 75 days before they can even begin their own make-ready work using utility-approved contractors. A one-touch, make-ready approach, however, would significantly shorten this timeline and reduce deployment costs. It would also prevent incumbents from intentionally slowing down the make-ready process to stifle their competition, particularly in the case of large pole attachment orders.

Various OTMR approaches have already been adopted in several cities around the country,[3] and the approaches in Nashville, TN and Louisville, KY both make for excellent models for the type of OTMR rule the FCC should adopt. In Nashville, once the utility approves a new attachers' attachment application, they can hire a utility-approved contractor to begin the make-ready work after just 15 days instead of having to wait for the existing attachers to do it themselves.[4] These utility-approved contractors likely already exist because of the Commission's existing pole attachment rules, so Nashville's OTMR approach could be implemented nationwide without much delay, and it could cut months off the make-ready timeline. Existing attachers thus wouldn't be able to delay new attachers deployment on make-ready work. However, pole owners and existing attachers would still have a 60-day window in which they could inspect the work after the fact to ensure its quality, and could force the new attachers to pay for any necessary remedial work.[5]

Louisville's approach would shorten the make-ready timeline even further than Nashville's. It eliminates the 15-day notification window on the front-end of make-ready work for routine requests, and also shortens the post-work inspection period from 60 to 14 days.[6] Aside from shortening the timeline, the Louisville approach is nearly identical to Nashville's.

A federal OTMR rule is consistent with the FCC's goals under Secs. 224 and 706 of the Communications Act and thus can and should be passed by the Commission. The FCC's General Counsel has already stated that "promoting the deployment of competitive broadband

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[1] *In re* Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84, Notice of Proposed Rulemaking, Notice of Inquiry, and Requests for Comment, para. 7 (2017) ("Wireline Infrastructure NPRM").
[2] *Id.*
[3] Wireline Infrastructure NRPM, para. 21 (2017).
[4] *Id.* at para. 22.
[5] *Id.*
[6] *Id.* at para. 23.

infrastructure through one-touch make-ready policies is consonant with the goals of federal telecommunications policy, the Communications Act, and applicable FCC regulations."[7] He also noted that OTMR policies directly advance Sec. 706's goals to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans."[8]

In addition to adopting a federal OTMR policy, the Commission should make one other significant change to its make-ready rules: it should limit make-ready fees charged by pole owners to actual costs incurred. Make-ready fees are not currently subject to any rate formula, and instead are only required to be "just and reasonable" under Sec. 224(b)(1).[9] Because new attachers have no other choice but to attach their equipment to existing poles, pole owners may have incentive to use this power to charge exorbitant fees for make-ready work. This is particularly true when the new pole owners are ISPs who will ultimately find themselves competing with these new attachers. As the FCC itself stated in its 2010 National Broadband Plan, "Delays can also result from existing attachers' action (or inaction) to move equipment to accommodate a new attacher, potentially a competitor."[10] Limiting make-ready fees to actual costs incurred would properly compensate pole owners without allowing them to profit off their unique market position.

These changes to the FCC's make-ready rules could have a significant impact on infrastructure deployment by lowering costs for new attachers and shortening the process for access to utility poles by months. They could spur existing providers to expand and/or upgrade their networks, and they could also help to incentivize new competitors to enter the market by providing them with more certainty about the timeline and costs of the pole attachment process.

III. State Preemption and Local Laws Inhibiting Broadband Deployment

The FCC should tread carefully when deciding when to preempt states' infrastructure deployment laws so as not to deter states from passing progressive laws. Some states and municipalities have passed laws that actively improve and encourage broadband deployment, and we hope that the trend continues and grows going forward. That said, the FCC should establish federal standards that inform states and localities about best practices for their infrastructure laws, and there are certain situations where preemption should be used. In general, the FCC should encourage states and localities to make their permitting processes ministerial and to remove subjectivity from the processes. States should adopt clear, streamlined standards that apply equally to all ISPs.

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[7] Letter from Howard J. Symons, General Counsel, Federal Communications Commission, to Benjamin C. Mizer, Principal Deputy Assistant Attorney General, Civil Division, U.S. Dept. of Justice, 5 (Oct. 31, 2016), *available at* https://consumermediallc.files.wordpress.com/2016/11/fcc-att-louisville.pdf.

[8] *Id.* at 6.

[9] 47 U.S.C. § 224(b)(1). *See also* Wireline Infrastructure NPRM, para. 32 (2017).

[10] FCC, *Connecting America: The National Broadband Plan,* 111 (2010).

The NPRM touched on three potential areas where federal preemption could be necessary, however: 1) excessive delays in negotiations and approvals for rights-of-way;[11] 2) excessive fees and costs;[12] and 3) unreasonable conditions.[13]

Rights-of-way negotiations and approvals can obviously prove complicated and can vary significantly based on circumstances from city-to-city and state-to-state. The Commission, however, should outline a model framework for rights-of-way negotiations and approvals that cities and states could adopt. Ideally such a framework would provide ISPs and potential ISPs upfront with clear standards, prices and timelines, instead of having to negotiate these things individually every time they are seeking access to rights-of-way. The FCC should only intervene in circumstances in which approval delays have become excessive to the point that they have risen to the level of "prohibiting the provisioning of interstate or intrastate telecommunications service."[14]

Similarly, the FCC should offer guidance for what a reason rights-of-way fee structure should look like. While states and municipalities have a right to charge fees and make money from rights-of-way access, if those fees are so high as to actively deter ISPs from deploying infrastructure or entering new markets, it becomes counter-productive and potentially violates the Communications Act. Communities derive long-term economic benefits from having improved broadband infrastructure that far exceed the short-term gains they receive from rights-of-way fees. Should rights-of-way fees rise to the level of deterring investment in infrastructure, the Commission should intervene.

Finally, the FCC should pass rules that prevent states and localities from including unrelated, unreasonable conditions in the context of granting access to rights-of-way. These conditions could disproportionately impact new and smaller ISPs trying to compete in a market, and raise costs for that could be passed on to customers.

IV. Conclusion

The FCC's can only do so much on its own to promote the deployment of wireline broadband infrastructure, but it should pass new regulations that will help actually help improve access to poles and rights-of-way. A federal one touch, make-ready policy and new rules for make-ready fees would go a long way towards accomplishing this goal. Additionally, the Commission should issue guidance for state and local rights-of-way processes, and seek to preempt state laws if they are actively hindering broadband deployment. These changes will help improve broadband coverage speeds, increase competition and reduce customer costs nationwide.

[11] Wireless Infrastructure NPRM, para. 101 (2017).
[12] *Id.* at para. 104-105.
[13] *Id.* at para. 106.
[14] 47 U.S.C. § 253(a).